

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 561 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JASWANTBHAI KARSANBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

Ms. Suman Pahwa for M/S THAKKAR ASSOC. for Petitioner
MR KT DATE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2000

ORAL JUDGEMENT

#. The District Magistrate, Bharuch, passed an order on 25th August, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detainee under the provisions of the PASA Act.

#. The detenue was detained by the authority after considering five offences registered against the detenue and statements of four witnesses, whose identity has not been disclosed by the detaining authority by claiming privilege under section 9(2) of the PASA Act. The detaining authority after considering less drastic remedies, came to a conclusion that the petitioner-detenue is a "bootlegger" and his bootlegging activities are required to be immediately prevented and for that purpose, detention under the PASA Act is the only efficacious remedy that can be resorted to.

#. The detenue/petitioner challenges the order of detention on various grounds. However, the main ground urged and relied upon by learned advocate Ms. Pahwa is delay in forwarding the representation by the detaining authority, which has affected the right of the detenue of making an effective representation vitiating the continued detention of the detenue. She urged that on this ground, the petition may be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. The only ground that requires to be considered is whether there was delay in forwarding representation. In this regard, it appears that the representation dated 22nd January, 2000 was made on behalf of the detenue, which was received by the detaining authority on 24th January, 2000 and the detaining authority forwarded the same to the State Government on 28th January, 2000. Thus, there was a gap of 4 days in forwarding the representation. There is no dispute about the factual aspect stated above.

#. The order of detention is passed on 25th August, 1999. It was duly approved by the government as required under the law and therefore, on 24th January, 2000, when the representation was received by the detaining authority, the authority had become functus officio and all that it was required to do was to forward the representation to the government. In forwarding the representation, the detaining authority has taken 4 days and has forwarded the same on 28th January, 2000. This delay in forwarding the representation has affected the right of the detenue of making an effective representation and therefore, the continued detention therefore would be bad in law. The petition therefore, deserves to be allowed on this ground alone.

#. This petition is allowed. The impugned order of detention dated August 25, 1999 passed against the detenue is hereby quashed and set aside. The detenue Jasvantbhai Karsanbhai Vasava is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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